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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Fred Heidarpour,

10 Plaintiff,

11 v.

12 Secured Marketing Concepts Corporation,

13 Defendant.
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No. CV-24-00239-PHX-JJT

ORDER

15 At issue is Plaintiff's Declaration of Gadi Yuditsky (Doc. 12, "Dec."), filed in
16 response to the Court's May 10, 2024 Order (Doc. 9) requiring Plaintiff to show proof of
17 service.

18 The Court found Plaintiff's original proof of service inadequate first because it
19 failed to state that Defendant was served with the Complaint. (Docs. 7, 9.) It also stated
20 that the summons was served on "John Doe – apparently in charge," which was insufficient
21 for the Court to determine whether Plaintiff served the Defendant corporation in
22 compliance with the service of process rules. (Docs. 7, 9.) The Court ordered Plaintiff to
23 file a new proof of service remedying these two defects. (Doc. 9.) Plaintiff filed the
24 declaration of his process server. (Doc. 12.)

25 The declaration states that the process server entered Defendant's office and noticed
26 a broker's license hanging on the wall bearing the name of Defendant's registered agent,
27 Christopher Nelson Beard. (Dec. ¶ 4.) The process server eventually told a man inside the
28 office that he was looking for Mr. Beard, but the man said he had never met Mr. Beard and

1 told the process server to leave. (Dec. ¶ 6.) The process server tried to hand the man “the
2 service documents,” but he refused to accept them and forced the process server to exit the
3 office. The process server then “affixed said documents” to the door and announced
4 service. (Dec. ¶ 8.) After the process server left, he searched the company on the internet,
5 found images of the man he had spoken to, and concluded that “he appears to be someone
6 in charge at the company.” (Dec. ¶ 9.)

7 The declaration explains that the process server “was engaged by counsel for the
8 Plaintiff in this matter to serve the complaint and summons.” (Dec. ¶ 2.) And it goes on to
9 state that the process server tried to hand off “the service documents” before he ultimately
10 “affixed said documents” to a door. (Dec. ¶¶ 7–8.) These are the only mentions of any
11 documents. Because the declaration does not specifically describe “the service
12 documents,” it does not clearly show whether the documents were the complaint and
13 summons.

14 But even if the Court infers from the declaration that “the service documents” were
15 the complaint and summons, Plaintiff’s service is still lacking. A plaintiff may effectuate
16 service of process in any judicial district pursuant to the service of process laws of either
17 the state in which the district court is located or the state where service is made. Fed. R.
18 Civ. P. 4(h)(1)(A), (e)(1). The declaration indicates that service was made in California.
19 (Dec. ¶ 3.) To serve a corporation in California, the summons and complaint must be
20 delivered either to “the person designated as agent for service of process” or to one of
21 several listed officers or managers or a person authorized by the corporation to receive
22 service of process. Cal. Civ. Proc. Code § 416.10(a)–(b). In lieu of personal delivery to
23 such a recipient, the documents may be left “during usual office hours in his or her office
24 . . . with the person who is apparently in charge thereof, and by thereafter mailing a copy
25 of the summons and complaint . . . to the person to be served at the place where a copy of
26 the summons and complaint were left.” *Id.* § 415.20(a).

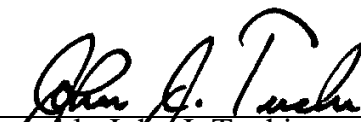
27 Although the process server stated that the man “appears to be someone in charge
28 at the company,” the declaration provides no facts in support of that conclusion. (Dec. ¶ 9.)

1 The declaration does not describe the details of the process server's internet search. (Dec.
2 ¶ 9.) And although the declaration includes the image of an online review depicting the
3 man, this tends to show only that the man works for Defendant. (Dec. ¶ 9.) There are no
4 additional facts, such as his full name or job title, that would indicate the man was
5 "apparently in charge" as required by California's statutes. Moreover, if a party elects to
6 serve a corporation by leaving a copy of the documents at the office, the documents must
7 also be mailed to the office after the fact. Cal. Civ. Proc. Code § 415.20(a). Neither the
8 declaration nor the original proof of service make any mention of such a mailing. (Dec.;
9 Doc. 7.) The declaration thus fails to establish adequate service under California law. And
10 because Arizona does not allow the documents to be left with someone apparently in
11 charge, *see* Ariz. R. Civ. P. 4.2(h), the purported service fails under Arizona law as well.

12 **IT IS THEREFORE ORDERED** that Plaintiff shall file a Proof of Service for
13 Defendant showing service of the Summons and Complaint and establishing compliance
14 with the Arizona Rules of Civil Procedure or the rules of any state in which service was
15 made.

16 **IT IS FURTHER ORDERED** that Plaintiff shall complete service and file an
17 affidavit with the Court that proves Defendant was served in compliance with the Rules
18 within 30 days of the date of this Order.

19 Dated this 7th day of June, 2024.

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21 Honorable John J. Tuchi
22 United States District Judge
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